

These are the tentative rulings for civil law and motion matters set for Tuesday, July 9, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 8, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0058214 Olympus Park Apartments, LLC vs. Forrester, Orane, et al**

This tentative ruling is issued by the Hon. Michael W. Jones. If oral argument is requested, it shall be heard on July 9, 2013 at 8:30 a.m. in Department 43.

Defendant O'rane Forrester's motion for new trial is denied.

The motion papers, filed May 21, 2013, do not cite any C.C.P. § 657 grounds for a new trial. The court assumes, based on the brief declaration of moving party, that he alleges insufficiency of the evidence under C.C.P. § 657(6).

The court cannot find the evidence insufficient to support the verdict. Moving party declares that the eviction was "predicated on a police report that ha[d] no substance" because no "drugs [were] found in [defendant's] apartment, and the people who were arrested [at the apartment], their cases were dismissed." Declaration of Forrester, attached to moving papers. Even if these statements had an admissible, credible factual basis, they do not show that plaintiff's notice to terminate the lease (which lead to this unlawful detainer action) was defective or unenforceable. The court was persuaded at trial and remains of the opinion that, by a preponderance, that defendant unlawfully remained in possession of the premises after notice of termination of lease and notice to quit.

**2. S-CV-0026797 Pollack, Kirsten, et al vs. Rocklin Foreign Car, et al**

Defendants Parke Jesse Sutton and William Lynn Ivey's Motion for Good Faith Settlement is granted. Based on the factors set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling parties' proportionate share of liability for plaintiff's injuries, and therefore is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6.

**3. S-CV-0029805 Gyori, Jeremy, et al vs. River City Builders, Inc., et al**

Cross-defendant Jim Alexander Concrete Construction, Inc.'s Motion for Good Faith Settlement Determination is granted. Based on the factors set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiff's injuries, and therefore is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6.

Cross-defendant Steven Russell Lutes dba Capital Coatings' Motion for Good Faith Settlement Determination is granted. Based on the factors set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiff's injuries, and therefore is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6.

Cross-defendant Mantell Masonry Construction, Inc.'s Motion for Good Faith Settlement Determination is granted. Based on the factors set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiff's injuries, and therefore is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6.

**4. S-CV-0029936 Winchester Community Ass'n vs. Perrotta, Charles, et al**

This tentative ruling is issued by the Honorable Colleen M. Nichols. **If oral argument is requested, it shall be heard on Wednesday, July 10, 2013 at 9:00 a.m. in Department 4. Department 4 is located at 101 Maple Street, Auburn, CA 95603.**

Defendant and cross-complainants' Motion to Reopen Presentation of Evidence at Trial is denied.

The court is empowered to permit a party to reopen its case to introduce new evidence pursuant to its inherent power to control the order of proof and the conduct of proceedings. Code Civ. Proc. § 128(a)(3); Evid. Code § 320. However, such request may be denied absent an adequate explanation for the party's failure to present in the evidence in question during the trial. *Broden v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1222.

Defendants note that the alleged failure of Winchester Community Association to properly hold elections forms a basis of their cross-complaint. The evidence proffered, which defendants contend supports this claim, are defendants' own documents which presumably have been in their possession since the initiation of the instant lawsuit. Defendants contend that they were "surprised" by the testimony of Winchester Community Association Manager Kyle Bodyfelt, which contradicted the testimony of defendant Charlotte Perrotta on this issue, but do not offer a reasonable explanation for why documents within their possession, which purportedly support their position on a significant issue in the case, were neither introduced as evidence in their case-in-chief, nor available for impeachment purposes during trial. A motion to reopen evidence should be denied where the failure to introduce the evidence during trial

was neither inadvertent nor excusable, but was the product of a knowing and informed choice of trial tactics. *See Rosenfield, Meyer & Susman v. Cohen* (2001) 191 Cal.App.3d 1035, 1053.

**5. S-CV-0031547 Blix, Jonathan, et al vs. Schug, Jacob John, et al**

The Motion for Summary Judgment, or in the Alternative, for Summary Adjudication, is continued to July 11, 2013 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**6. S-CV-0031885 Bechhold, Jerry R. vs. Bank of America**

Plaintiff's Motion for Reconsideration is denied. It is unclear from plaintiff's moving papers whether he seeks reconsideration of the court's order setting aside his second amended complaint, which was improperly filed without leave of court, or the court's order sustaining defendants' demurrer to plaintiff's first amended complaint without leave to amend, and dismissing each cause of action stated therein. If directed to the court's order setting aside the second amended complaint, the motion is untimely, and fails to present any valid reason for reconsideration. Plaintiff was given multiple opportunities to request leave of court to file the second amended complaint, and never did so.

Assuming plaintiff seeks reconsideration of the court's order on the demurrer, the motion is not untimely. Nevertheless, while defendant asks the court to consider additional facts stated in the proposed second amended complaint, he fails to assert any valid reason for not offering such facts at the time the demurrer was heard. *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. A party seeking reconsideration of a prior order based on new or different facts, circumstances or law must provide a satisfactory explanation for failing to present the information at the first hearing; i.e., a showing of reasonable diligence. *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690. There is no showing of reasonable diligence in this case.

If oral argument is requested, defendants' request for telephonic appearance is granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

**7. S-CV-0032785 Uhler, Kirk vs. U.S. Digital Gaming, Inc., et al**

Defendants' Motion to Transfer Venue is granted. Plaintiff's complaint alleges wage and hour claims, as well as claims for wrongful termination in violation of public policy and intentional infliction of emotional distress. Actions for injury to reputation, including for emotional distress, are triable only in the county of defendant's residence. *Carruth v. Superior Court* (1978) 80 Cal.App.3d 215, 219–220; *Cubic Corp. v. Superior Court* (1986) 186 Cal.App.3d 622, 625. Where plaintiff alleges two or more causes of action, each governed by a different venue provision, or joins two or more defendants who are subject to different venue standards, venue must be proper as to all causes of action and defendants joined. *Brown v. Superior Court* (1984) 37 Cal.3d 477, 488. In such cases, a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any one cause of action. *Id.*; *see also Capp Care, Inc. v. Superior Court* (1987) 195 Cal. App. 3d 504, 508. As

there is no dispute that individual defendants in this action reside in Los Angeles County, venue is proper in that county. This action shall therefore be transferred to Los Angeles County.

If oral argument is requested, the parties' requests for telephonic appearance are granted. Effective July 1, 2013, all telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

**8. S-CV-0032912 Duerst, Ryan J. vs. Superior Court of Calif. County of Placer**

This tentative ruling is issued by the Honorable Angus Saint-Evens. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 32:

Defendant's Demurrer to the Complaint

Preliminary Issues

As an initial matter, the court notes that plaintiff filed a declaration on July 1, 2013 attaching various exhibits. These documents and additional arguments were not timely presented in plaintiff's prior declaration filed on June 13, 2013 and he was not granted leave to file any supplemental briefing. Therefore, the court strikes the plaintiff's declaration filed on July 1, 2013.

Ruling on Demurrer

The origins of this action take root from Placer Superior Court family law case no. SDR-39687, Lynsey Duerst v. Ryan Duerst. In response to what plaintiff describes as multiple violations of the law in the underlying family law action, he filed this civil case naming two defendants: the Superior Court of California, County of Placer (hereinafter "Placer Court") and the Commission on Judicial Performance (hereinafter "CJP"). Plaintiff, *in propria persona*, filed his complaint on April 24, 2013. The complaint is pled on Judicial Council forms and alleges personal injury based upon "persecution", "malice", and "oppression" (*sic*). However, plaintiff goes on to allege general negligence in the body of his complaint. He contends that several judicial officers violated California law and the California Rules of Court when ruling upon matters in the underlying family law action. He also alleges compliance with the Government Claims Act and attaches exhibits in support of his compliance with the Act. Plaintiff alleges damages in excess of \$13,449,596.00.

The pending demurrer is brought on behalf of Placer Court and asserts that the complaint is barred by the doctrine of judicial immunity. The plaintiff filed a declaration, which essentially is his opposition, refuting that judicial immunity is applicable in this case. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

A review of the complaint reveals significant deficiencies. First, the complaint is nearly unintelligible. Plaintiff asks nine questions and then recites numerous portions of the California Rules of Court and the California Code of Judicial Ethics along with reprinting sections of the Family Law Code, California Rules of Court, and the California Code of Judicial Ethics. Of the factual allegations that exist, they are pled in a conclusory fashion and do not relate to the prior alleged violations that occurred on January 5, 2012.

Furthermore, plaintiff names Placer Court, a public entity, as a defendant while the majority of the factual allegations made in the complaint address rulings made by a single judge. There are no essential facts alleged against Placer Court or reference to an authorizing statute that acts as the basis of liability against Placer Court. A public entity is normally not liable for an injury that arises out of an act or omission of the public entity, a public employee, or any other persons. (Govt C§815; *Lueter v. State of California* (2002) 94 Cal.App.4th 1285, 1299.) Since governmental tort liability depends upon an authorizing statute, the operative pleading must plead with particularity the essential facts establishing statutory liability. (*Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d. 792, 802; *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1459.)

This leaves the other major deficiency in the complaint, the failure to sufficiently plead facts that plaintiff's cause of action lies outside the judicial immunity. The majority of the complaint alleges that specific judicial officers, while acting in their judicial capacities, violated California law when they made various rulings in his family law case. "[J]udges are granted immunity from civil suit in the exercise of their judicial functions. [Citations.] *This rule applies even where the judge's acts are alleged to have been done maliciously and corruptly.* [Citations.] The rule is based on ' "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself." ' [Citations.]" [Emphasis added.] (*Frost v. Geernaert* (1988) 200 Cal.App.3d 1104, 1107.) The complaint is insufficient since plaintiff fails to plead facts that lie outside the scope of judicial immunity so as to withstand the current demurrer.

The demurrer is sustained with leave to amend. The plaintiff shall file and serve his first amended complaint on or before August 2, 2013.

If oral argument is requested, defendant's request for telephonic appearance is granted. The defendant is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

**9. S-CV-0032961 Barkho, Peter vs. Cal. Unemployment Insurance Appeals**

**Ruling on Demurrer to Petition for Writ of Mandate**

Respondent's Demurrer to Petition for Writ of Mandate is sustained without leave to amend. Judicial review from an appeals board decision under Unemployment Insurance Code section 410 must be sought within six months of the date of the decision. The decision in this case was issued on July 12, 2012. Petitioner did not file his petition until May 6, 2013, more

than six months after the date of the decision. Accordingly, this court has no jurisdiction to determine the merits of the petition. Even if not untimely, petitioner failed to provide either a memorandum of points and authorities, or the administrative record from the underlying hearing. Accordingly, petitioner fails to offer any information that may be considered by the court in ruling on the petition. Code Civ. Proc. § 1094.5.

Ruling on Petition for Writ of Mandate

In light of the ruling on the demurrer to the petition, petitioner's Writ of Mandate is dropped as moot.

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